

IN THE SENATE OF THE UNITED STATES.

MAY 20, 1858.—Ordered to be printed.

Mr. GREEN submitted the following

REPORT.

*The Committee on the Judiciary, to whom was referred a resolution of the Senate, directing them "to inquire into the expediency of conferring on the district courts of California, in the investigation of facts relating to cases pending on appeal from the United States land commissioners, the powers given to the courts of the United States by the judiciary act of 1789, in regard to the taking of depositions," have had the same under consideration, and report:*

The act establishing a board of commissioners to ascertain and settle private land claims in California, evidently intends that any witness examined in support of a claim should be subject to oral cross-examination by the district attorney, or other proper officer of the United States, whether the testimony was taken whilst the claim was pending before the board, or when removed by appeal into the district court. Under this act more than two-thirds of the claims to land under Mexican or Spanish grants have been adjudicated.

In the progress of proceedings under the act, it has been developed that many claims have been preferred, founded on forged title papers, and supported by fraudulent testimony, and, it is scarcely to be doubted that some, if not many, have succeeded in establishing claims by such testimony. The existence of a numerous class of claims, most of which are still pending, in which the sole question is, whether the claim is founded on false and fraudulent evidence is undeniable, and the effect of extending the provisions of the judiciary act of 1789 beyond the limits of the United States, and of dispensing with an oral cross-examination by the proper officer of the United States, would have the evil consequence of facilitating frauds upon the government, by removing the greatest safeguard against fraud. The language of the Supreme Court, in speaking of that species of testimony, which would be made available against the United States, if the provision of the judiciary act were extended to foreign countries, in cases now pending in the district court of California, is the result of judicial experience, and would seem rather to require the restriction than the extension of that act. "At best it is calculated to elicit only such a partial statement of the truth as may have the effect of entire false-

hood. The person who prepares the witness and examines him can generally have just so much or little of the truth, or such a version of it as will suit his case. In closely contested cases of fact, testimony thus obtained must always be unsatisfactory and liable to suspicion." "The provision of the act of Congress should never be resorted to, unless in circumstances of absolute necessity."—(Walsh vs. Rogers, 13 Howard, p. 286-'7.) This *absolute necessity* does not seem to exist in California, but on the contrary, the district attorney, as well as the special counsel of the United States, have both declared, that with such an alteration of the law, it will be a vain effort for the government to resist fraudulent claims, and that in those pending and resisted by the United States, on the ground of fraud, the resistance will be unavailing if the change is effected.

The only object of such a change of the law is to enable claimants to examine witnesses in Mexico as to California land grants in cases now pending, without their being subjected to the test of an oral cross-examination. Two-thirds, at least, of the claims in California have been disposed of without resort to such testimony, and considering the low state of private and public morals in Mexico, the unsettled and disorganized condition of its government, and the experience of the United States in relation to the facility with which fraudulent and forged documents can be established there, the prevention of fraud would seem imperatively to require that the provision of the act of 1851, organizing the land commission, in relation to the mode of obtaining testimony, should remain unaltered.

The committee are of opinion that it is not necessary for the purposes of justice, or expedient, that any additional power in relation to taking testimony, inconsistent with the provisions of the act of 1851, should be conferred on the district courts of California.